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SUBJECT: THE ASEAN INTER-GOVERNMENTAL COMMISSION ON HUMAN  
RIGHTS: NO BARK, NO BITE?

REF: A. 08 BANGKOK 2941 (THAILAND ASSUMES ASEAN CHAIR)  
[1](#)B. 08 BANGKOK 3701 (ASEAN CHARTER)  
[1](#)C. BANGKOK 517 (14TH ASEAN SUMMIT)

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[1](#)1. (SBU) SUMMARY: ASEAN plans to launch its newly-developed human rights body, the ASEAN Inter-Governmental Commission on Human Rights (AICHR) at the 15th ASEAN Summit in October in Thailand. Although local and international NGOs have already described the Terms of Reference (ToR) adopted by Foreign Ministers in July as "toothless," Thai academics and human rights activists involved in the drafting process have defended the document as a step in the right direction. While one could characterize the AICHR ToR as a significant achievement given ASEAN dynamics and the need for buy-in from "new ASEAN" members Burma, Cambodia, Laos, and Vietnam, the ToR only provides for an "evolutionary framework" to be re-evaluated after a five-year review period. It is unclear whether this body will be able to enhance its legitimacy and make concrete gains during the ensuing chairmanships of Vietnam, Brunei, and Cambodia. Thailand is attempting to set a precedent of a transparent process in selecting its representative, involving civil society and likely selecting a non-governmental official, following its similar earlier decision to send an academic expert to the existing High Level Panel on the Human Rights Body. END SUMMARY

MOVING TOWARDS AN ASEAN HUMAN RIGHTS COMMISSION  
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[1](#)2. (SBU) On July 20, the ASEAN member nations took another significant step towards the creation of a regional human rights body as dictated by Article 14 of the ASEAN Charter (which entered into force December 2008, see Ref B). By adopting the Terms of Reference (ToR) drafted by the High Level Panel on the Human Rights Body (HLP) for what will be known as the ASEAN Inter-Governmental Commission on Human Rights, ASEAN is now poised to have a human rights mechanism, as do all other regional groupings in the world. However, there is a decided lack of positive sentiment by human rights observers about this development, as virtually all involved with its creation and implementation seem resigned to a "toothless" body tasked with only promotion, rather than protection, of human rights.(Ref C)

13. (SBU) From early in the process of shaping the body, human rights activists and NGOs have denigrated the proposed ToR and resultant mechanism, calling it "decorative" (Ref B) and a "sham" or "diplomatic window dressing." In addition to these expected criticisms, ASEAN itself seems determined to keep expectations low. Official ASEAN communications emphasize that the ToR reflect a "maximum consensus" and that the "evolutionary" nature of the platform allows for the possibility of later "enhancement" at the five-year review. Prime Minister Abhisit Veijajiva was even more explicit that the body would initially focus only on promotion, but maintained, "It is better to make a start."

14. (SBU) Longtime Thai human rights activists and academics echo the Prime Minister's sentiment. Dr. Sriprapha Petcharamesree of Mahidol University has been involved with the Working Group for an ASEAN Human Rights Mechanism (Working Group) since the early 1990s. She told us that members of the Working Group were laughed at for even contemplating an ASEAN human rights mechanism, and said that she could not help but see this latest development as a sign of progress. While admitting her disappointment with the ToR, she acknowledged that an incremental approach represented the only chance for success within ASEAN's environment of political compromise. Dr. Sriprapha revealed that the Working Group had contemplated giving up the fight and utilizing the ASEAN Commission on the Rights of Women and Children as a back door method to a human rights mechanism. In that context, the AICHR must be seen as an achievement.

#### THE SPECIFIC TERMS IN THE TERMS OF REFERENCE

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15. (SBU) The ToR language is general, and it arguably is open to interpretation by the AICHR chair and members. In

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particular, Dr. Sriprapha referenced the use of terms like "obtain information" and "prepare studies" which could be viewed as opportunities for monitoring and interviewing suspected victims of human rights violations. Similarly, Homayoun Alizadeh, the Regional Representative of OHCHR in Bangkok, highlighted the repeated use of "consult" and "consultation" as an opportunity for interaction with civil society. In contrast to this very general terminology is the explicit provision that any funding or contributions from other countries or sources "shall be used solely for human rights promotion, capacity building and education." In that sense, the ToR acts as a barrier to human rights protection activities sponsored by others.

16. (SBU) Of additional note is the use of the term "representative" rather than "commissioner" for the designated ASEAN member participants in AICHR, suggestive to some of a likely lack of independence of these country representatives. With this kind of cover, according to Alizadeh, it was unlikely that the majority of ASEAN members would appoint impartial individuals with proven expertise in human rights, as encouraged by the UN High Commissioner of Human Rights Navi Pillay.

#### WHO MORE IMPORTANT THAN WHAT?

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17. (SBU) All observers stressed that the potential effectiveness of the AICHR would be determined by its composition. While High Commissioner Pillay, in her congratulatory press release, urged that the national selection processes for representatives allow for "consultation and participation by all sections of society," only Thailand, Indonesia and the Philippines are likely to do anything other than directly appoint a government official, according to our contacts.

18. (SBU) Foreign Minister Kasit Piromya has vowed that Thailand's selection will represent Thailand's people, rather

than Thailand's government. Thailand's selection committee met August 28 for an initial discussion on the way forward and endorsed what it hopes will be a transparent process, including nominations from civil society, to stand as a precedent for other countries to follow, selection committee member (and journalist) Kavi Chongkittavorn told us August 31. As Thailand's representative on the HLP, Chulalongkorn University law professor Dr. Vitit Muntarbhorn was the only HLP member who was not a government official.

19. (SBU) Both Dr. Vitit and Dr. Sriprapha -- two likely candidates -- claim to have withdrawn themselves from consideration. Dr. Vitit told us he believes it would be inappropriate given his role on the HLP, and he is busy as the UN's Special Rapporteur on North Korea; Dr. Sriprapha prefers a behind the scenes role. Kavi predicted Surasi Kosolnawin, a former Thai Human Rights Commissioner who has pushed the Thai government in the past for more accountability in the Deep South, will emerge as the Thai representative. Dr. Vitit felt strongly that he played an important role as the only non-governmental representative on the HLP, and that his academic viewpoint, history as an activist, and close relationship with civil society provided a valuable perspective. Thailand's AICHR representative may be called on to fulfill that role again, depending on who else is selected.

10. (SBU) The other critical ASEAN member in this regard is Indonesia. Thai-based NGOs who have tracked the ToR drafting process from its inception, such as Forum Asia, note that Indonesia was the last holdout for a stronger human rights mechanism, one that had a protection mandate and could undertake investigations and receive complaints. Initially Indonesia had been joined by Thailand and the Philippines in pushing for a higher standard, but eventually the other two conceded, Thailand influenced by its desire to launch the AICHR during its chairmanship. While the political declaration accompanying the launch of AICHR in October will fall something short of a mandate, it could go farther than the ToR to discuss the future of AICHR and a possible roadmap

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that could lead to an emphasis on human rights protection. The document was drafted at a meeting in Jakarta last week and the HLP plans to wrap up its work at a meeting in Singapore in September.  
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